

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
ABILENE DIVISION

TRE VON WOODARDS,

Plaintiff,

v.

LEONARD GREEN & PARTNERS,

Defendant.

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CIVIL ACTION NO. 1:19-CV-00255-H-BU

REPORT AND RECOMMENDATION

Plaintiff Tre Von Woodards brings this *pro se* action, appearing to allege civil rights violations. This action has been referred to the undersigned United States magistrate judge for pretrial management under 28 U.S.C. § 636(b) and a standing order of reference from United States District Judge James Wesley Hendrix. The Court has granted Woodards leave to proceed *in forma pauperis* (“IFP”).

The complaint presently submitted is subject to summary dismissal. Woodards’ one-page complaint contains only the name of a defendant (“Leonard Green & Partners”) and a single, conclusory statement that “[m]y civil rights were violated.” *See* Dkt. No. 2. The complaint fails to include any details regarding the allegations or state any request for relief.

A district court may summarily dismiss a complaint filed IFP if it concludes that the action:

- (i) is frivolous or malicious;
- (ii) fails to state a claim on which relief may be granted; or
- (iii) seeks monetary relief against a defendant who is immune from such relief.

28 U.S.C. § 1915(e)(2)(B).

An action is frivolous if it lacks an arguable basis in either law or fact. *See Neitzke v. Williams*, 490 U.S. 319, 325 (1989); *see also Brewster v. Dretke*, 587 F.3d 764, 767 (5th Cir. 2009) (“A claim may be dismissed as frivolous if it does not have an arguable basis in fact or law.”). And a complaint is without an arguable basis in law if it is grounded upon an untenable, discredited, or indisputably meritless legal theory, including alleged violations of a legal interest that clearly does not exist. *See Neitzke*, 490 U.S. at 326-27; *Berry v. Brady*, 192 F.3d 504, 507 (5th Cir. 1999). Claims within a complaint lack an arguable basis in fact if they describe “fantastic or delusional scenarios,” *Neitzke*, 490 U.S. at 327-28, and such claims may be dismissed

as factually frivolous only if the facts alleged are clearly baseless, a category encompassing allegations that are fanciful, fantastic, and delusional. As those words suggest, a finding of factual frivolousness is appropriate when the facts alleged rise to the level of the irrational or the wholly incredible, whether or not there are judicially noticeable facts available to contradict them.

Denton v. Hernandez, 504 U.S. 25, 32-33 (1992) (citations and internal quotation marks omitted).

Dismissal for failure to state a claim “turns on the sufficiency of the ‘factual allegations’ in the complaint.” *Smith v. Bank of Am., N.A.*, 615 F. App’x 830, 833 (5th Cir. 2015) (per curiam) (quoting *Johnson v. City of Shelby, Miss.*, 574 U.S. 10, 12 (2014) (per curiam); emphasis added by *Smith*). And the Federal Rules of Civil Procedure “do not countenance dismissal of a complaint for imperfect statement of the legal theory supporting the claim asserted.” *Johnson*, 574 U.S. at 11.

To survive dismissal under the framework of *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007), and *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009), a plaintiff need only “plead facts sufficient to show” that the claims asserted have “substantive plausibility” by stating “simply, concisely, and directly events” that he contends entitle him to relief. *Johnson*, 574 U.S. at 12 (citing FED. R. CIV. P. 8(a)(2)-(3), (d)(1), (e)); *see also Inclusive Communities Project, Inc. v. Lincoln Prop. Co.*, 920

F.3d 890, 899 (5th Cir. 2019) (“Determining whether a complaint states a plausible claim for relief” is ‘a context-specific task that requires the reviewing court to draw on its judicial experience and common sense.’” (quoting *Iqbal*, 556 U.S. at 679; citing *Robbins v. Oklahoma*, 519 F.3d 1242, 1248 (10th Cir. 2008) (“[T]he degree of specificity necessary to establish plausibility and fair notice, and therefore the need to include sufficient factual allegations, depends on context.”))). In the current context, the Court “must construe the pleadings of *pro se* litigants liberally.” *Andrade v. Gonzales*, 459 F.3d 538, 543 (5th Cir. 2006).

Woodards’ current complaint lacks a logical set of facts that supports a claim for relief. And to the extent that his claims are not factually frivolous, he has so far failed to allege facts that support a plausible claim for relief. *See, e.g., Inclusive Communities Project*, 920 F.3d at 899 (“Where the well-pleaded facts of a complaint do not permit a court to infer more than the mere possibility of misconduct, the complaint has alleged – but it has not ‘show[n]’ – ‘that the pleader is entitled to relief.’” (quoting *Iqbal*, 556 U.S. at 678 (quoting, in turn, FED. R. CIV. P. 8(a)(2)))).

Although the Court “must construe the pleadings of *pro se* litigants liberally,” *Andrade*, 459 F.3d at 543, there is nothing in the complaint that indicates Woodards could state a claim even if he were allowed to file an amended complaint or answer a questionnaire. Even if the Court generously construes the current action as a suit under 42 U.S.C. § 1983, the named defendant appears to be a private entity, and Woodards has not provided any indication that this defendant was acting under color of state or local law.

Recommendation

The Court should dismiss Plaintiff Tre Von Woodards’ complaint as factually frivolous and/or for failure to state a claim without prejudice to him refiling his lawsuit at a later date.

A copy of these findings, conclusions, and recommendation shall be served on all parties in the manner provided by law. Any party who objects to any part of these findings, conclusions, and recommendation must file specific written objections within 14 days after being served with a copy. *See* 28 U.S.C. § 636(b)(1); FED. R. CIV. P. 72(b). In order to be specific, an objection must identify the specific finding or recommendation to which objection is made, state the basis for the objection, and specify the place in the magistrate judge's findings, conclusions, and recommendation where the disputed determination is found. An objection that merely incorporates by reference or refers to the briefing before the magistrate judge is not specific. Failure to file specific written objections will bar the aggrieved party from appealing the factual findings and legal conclusions of the magistrate judge that are accepted or adopted by the district court, except upon grounds of plain error. *See Douglass v. United Servs. Auto. Ass'n*, 79 F.3d 1415, 1417 (5th Cir. 1996).

IT IS SO ORDERED this 10th day of February, 2020.



JOHN R. PARKER
UNITED STATES MAGISTRATE JUDGE